

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

GERARD CAMPBELL, individually on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

DRINK Daily Greens, LLC, a Delaware limited
liability company,

Defendant.

Case No. 1:16-cv-07176-ILG-PK

**DECLARATION OF J. NOAH HAGEY,
ESQ. IN SUPPORT OF MOTION TO
SANCTION PLAINTIFF AND HIS
LAWYERS PURSUANT TO FRCP RULE
11**

J. Noah Hagey, Esq.
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Amit Rana, Esq. (*pro hac vice*)
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*Attorneys for Defendant
Drink Daily Greens, LLC*

I, J. Noah Hagey, Esq., declare as follows:

1. I am licensed to practice before this Court and am counsel of record for Defendant Drink Daily Greens, LLC (“Daily Greens”). I make this declaration based on personal knowledge. If called as a witness, I could and would testify competently to the facts stated herein.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Complaint in the action styled *Gerard Campbell v. Freshbev LLC and Whole Foods Market, Inc.*, No. 16-cv-07119-FB-ST (E.D.N.Y.).

3. Attached hereto as **Exhibit 2** is a true and correct copy of the Complaint in the action styled *Gerard Campbell v. Jamba, Inc. and Jamba Juice Company*, No. 16-cv-09993-VM (E.D.N.Y.).

4. Attached hereto as **Exhibit 3** is a true and correct copy of the Complaint in the action styled *Alamilla v. Hain Celestial Group*, No. 13-cv-05595-VC (N.D. Cal.).

5. Attached hereto as **Exhibit 4** is a true and correct copy of the U.S. Food & Drug Administration’s Guidance for Industry: The Juice HACCP Regulation - Questions & Answers, located at <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm072981.htm#E>.

6. Attached hereto as **Exhibit 5** is a true and correct copy of Daily Greens’ product label for their “Harmony Sweet Greens” Cold-Pressed Vegetable and Fruit Juice Blend.

7. Attached hereto as **Exhibit 6** is a true and correct copy of the Frequently Asked Questions section of Daily Greens’ website, located at <https://www.drinkdailygreens.com/faq>.

8. Attached hereto as **Exhibit 7** is a true and correct copy of the “Farm to Juice” page on Daily Greens’ website, located at <https://drinkdailygreens.com/farm-to-juice>.

9. Attached hereto as **Exhibit 8** is a true and correct copy of the “Green Juices” page on Daily Greens’ website, located at <https://drinkdailygreens.com/green-juices>.

10. Attached hereto as **Exhibit 9** is a true and correct copy of a letter dated March 15, 2017 sent from me to Plaintiff’s counsel.

11. Our firm is a boutique firm with offices in New York City and San Francisco that routinely handles high-profile litigation. A few years ago, we obtained one of the largest verdicts in Delaware Chancery Court that year, which exceeded \$35,000,000. Being a small firm of less than 20 lawyers, we run our cases as leanly and efficiently as possible.

12. I am a founding partner and the managing partner of BraunHagey & Borden LLP and am familiar with my firm’s billing practices and its billing in this matter. As detailed below, Daily Greens has incurred \$131,105 in reasonable attorney’s fees in conjunction with this litigation, broken down as follows: \$16,525 for preparing the immediate Rule 11 motion for sanctions, \$51,754 for preparing Defendant’s motion to dismiss the second amended complaint and reply in support thereof, \$33,677 for preparing Daily Greens’ first motion to dismiss the complaint and responding to Plaintiff’s iterative requests to amend the pleadings, and \$29,149 for case analysis, investigation, correspondence, client communications and other litigation activities.

13. I attended the University of Texas Law School as a President’s Scholar and graduated in 2001. Before founding BraunHagey & Borden LLP, I previously practiced at Quinn Emmanuel Urquhart & Sullivan (New York and San Francisco) and Dentons (London and New York). I also externed for the Honorable Chief Justice Thomas Phillips of the Texas Supreme

Court. I have tried cases in state and federal court and argued appeals in state and federal appellate courts. I have successfully prosecuted and defended over a hundred bet-the-company cases for Fortune 500 companies, private businesses, foreign sovereigns and other clients. With few exceptions, all my clients pay for my services on an hourly basis. Attached hereto as **Exhibit 10** is a true and correct copy of my professional biography. My standard billing rate is \$795/hour. This is the rate that I use on client pitches, the standard rate our firm bills clients and the rate numerous clients actually pay for my services. I billed 25.45 efficient hours on this matter, which consisted of establishing overall case strategy, revising court filings including two motions to dismiss and this rule 11 motion, and supervising other firm attorneys.

14. Matthew Borden is a founding partner at BraunHagey & Borden LLP. Mr. Borden graduated from the University of California, Hastings School of Law in 2000. After law school, Mr. Borden clerked for the Honorable William Alsup in the United States District Court for the Northern District of California, and then practiced at Morrison & Foerster LLP. Mr. Borden has tried cases in state and federal court and argued appeals in California state court and in the Ninth Circuit and D.C Circuit Court of Appeals. Mr. Borden has successfully represented Fortune 500 companies, private equity funds, financial institutions, and foreign governments in billion dollar lawsuits and other high-stakes litigation (some of his former clients include Bank of America, Kyocera Corp., Wells Fargo Bank, and the Government of Egypt). Attached hereto as **Exhibit 11** is a true and correct copy of Mr. Borden's professional biography. Mr. Borden's standard billing rate is \$745/hour, which is the rate used on client pitches, the standard rate billed to clients and the rate numerous clients actually pay for services. Mr. Borden billed 85.7 efficient hours on this matter, which consisted primarily of establishing overall case strategy and drafting and revising court filings, including two motions to dismiss and this rule 11 motion.

15. Amit Rana is an associate at BraunHagey & Borden LLP. Mr. Rana graduated from the University of California, Davis School of Law in 2013, where he was the editor of the UC Davis Law Review. Attached hereto as **Exhibit 12** is a true and correct copy of Mr. Rana's professional biography. His standard billing rate is \$450/hour, which is the rate used on client pitches, the standard rate billed to clients and the rate numerous clients actually pay for services. Mr. Rana billed 91 efficient hours on this matter, which consisted of legal research, drafting of court filings including two motions to dismiss and this rule 11 motion, and communications with opposing counsel.

16. Molly Tullman was an attorney previously with BraunHagey & Borden LLP. Ms. Tullman graduated from Northwestern University Pritzker School of Law in 2006. Her standard billing rate was \$450/hour, which is the rate used on client pitches, the standard rate billed to clients and the rate numerous clients actually pay for services. Ms. Tullman billed 30 efficient hours on this matter, which consisted of legal research and drafting and revising court filings.

17. Katie Kushnir is a legal assistant at BraunHagey & Borden LLP. Her standard billing rate is \$225/hour, which is the rate used on client pitches, the standard rate billed to clients and the rate numerous clients actually pay for services. Ms. Kushnir billed 28.9 efficient hours on this matter, which consisted of legal research and revising court filings.

18. In accordance with our firm's standard practice, I wrote off any time that I believed was not efficiently spent, including time I believe was spent unnecessarily or duplicatively. I also wrote off time spent by lawyers on tasks that might be considered administrative.

19. The rates charged by BraunHagey & Borden LLP, as detailed above, are commercially reasonable and are below the rates charged by many firms doing similar work in

the San Francisco and New York market, which can exceed \$1,000 per hour for partners and \$600 for associates. Our firm's rates have been approved by the Ninth Circuit in conjunction with sanctions on appeal, United States District Court of the Northern District of California in conjunction with discovery sanctions and by various state courts in fee petitions.

20. The total amount incurred by Drink Daily Greens in defending this lawsuit is \$131,105. Defendant is seeking recovery of only \$111,439, which represents a 15% discount on the amount actually incurred to eliminate any possible inefficiency or any argument that the fees include improper administrative or over charges (which they do not).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: November 2, 2018



J. Noah Hagey